

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CAROLE LaROCHE,

Plaintiff,

v.

JERRY R. KIMBALL, et al.,

Defendants.

C15-1003 TSZ

ORDER

THIS MATTER comes before the Court on defendant Jerry R. Kimball's motion for summary judgment, docket no. 54. Having reviewed the motion, the declarations of Jeffrey T. Kestle, docket no. 55, and Jerry Kimball, docket no. 56, plaintiff Carole LaRoche's declaration, docket no. 79, plaintiff's supplemental response, docket no. 115, and Kimball's reply, docket no. 127, the Court enters the following order.

**Discussion**

From March 2009 until February 2010, Kimball represented plaintiff in King County Superior Court proceedings to dissolve plaintiff's marriage. Kimball Decl. at ¶ 3 (docket no. 56). Plaintiff was subsequently represented by Ted D. Billbe and, in October 2010, received a favorable judgment in the principal amount of \$568,000, plus attorney's fees in the amount of \$70,000. See Order at 3 (docket no. 30, Case No. C13-1913 TSZ).

1 In May 2012, Kimball sued plaintiff to recover his unpaid legal fees. Kimball Decl. at  
 2 ¶ 6. Kimball and plaintiff reached a settlement, which was memorialized in a written  
 3 agreement, and the fee action was dismissed with prejudice. *Id.* at ¶¶ 7–8 & Exs. 6–7. In  
 4 executing the Settlement Agreement, plaintiff released Kimball from

5 all claims, demands, liabilities, obligations, damages, causes of action  
 6 or suits, administrative claims, or any other claim whether known or  
 7 unknown, and whether suspected or unsuspected, arising out of the  
 8 representation of Carole L. Hoffman in the Superior Court of the State of  
 9 Washington for King County in Case No. 09-3-02400-0 SEA, including in  
 10 any appeals therefrom . . . .

11 *Id.* at Ex. 6, ¶ II.A.

12 In this action, plaintiff asserts against Kimball claims of civil conspiracy,  
 13 conversion, and negligence. *See* Am. Compl. at §§ IV–VI (docket no. 17). All of these  
 14 claims “arise out of” Kimball’s representation of plaintiff in the dissolution proceedings.  
 15 *See, e.g., Nat’l Sur. Corp. v. Immunex Corp.*, 162 Wn. App. 762, 773, 256 P.3d 439  
 16 (2011) (“arising out of” means “‘originating from,’ ‘having its origin in,’ ‘growing out  
 17 of,’ or ‘flowing from’”). These claims are therefore precluded by the valid and binding  
 18 release executed by plaintiff in June 2012. *See Nationwide Mut. Fire Ins. Co. v. Watson*,  
 19 120 Wn.2d 178, 187-90, 840 P.2d 851 (1992).

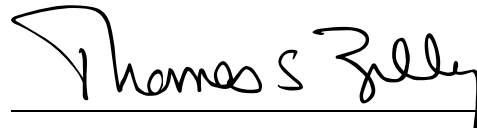
## 20 **Conclusion**

21 For the foregoing reasons, defendant Jerry R. Kimball’s motion for summary  
 22 judgment, docket no. 54, is GRANTED; no genuine dispute as to any material fact exists  
 23 and Kimball is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a).  
 Plaintiff’s claims against Kimball are DISMISSED with prejudice. Judgment will be

1 entered in favor of Kimball and against plaintiff after the remaining claims in this matter  
2 are resolved. After judgment is entered, Kimball may tax costs in the manner set forth in  
3 Local Civil Rule 54(d), but the Court DECLINES to award attorney's fees under either  
4 the provisions of the Settlement Agreement or 28 U.S.C. § 1927. Although plaintiff  
5 might be said to have multiplied the proceedings "unreasonably and vexatiously," *id.*, the  
6 Court is persuaded that an award of attorney's fees will do far more to fan the flames of  
7 discord and increase the costs associated with this litigation than to deter plaintiff's  
8 abusive practices. Plaintiff is, however, hereby ADVISED that, if she further pursues  
9 litigation against Kimball, which is ultimately deemed frivolous, the Court might  
10 reconsider its ruling and impose the requested sanctions. In light of the dismissal of  
11 plaintiff's claims against Kimball, this case is hereby RECAPTIONED as Carole  
12 LaRoche v. Catherine Wright Smith, et al. The Clerk is DIRECTED to send a copy of  
13 this Order to all counsel of record and to plaintiff pro se.

14 IT IS SO ORDERED.

15 Dated this 15th day of March, 2016.

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18 Thomas S. Zilly  
19 United States District Judge  
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